

(July 12, 1726.)

P E T I T I O N

F O R

John Campbell of Calder, Esq;



Y^e Lords of Council and Session, unto your Lordships humbly means and shows your Servitor *John Campbell of Calder, Esq;* That Sir *Hugh Campbell of Calder*; my Grandfather, being bound as Cautioner for *Grant of Glenmoristoun* to Sir *George Mackenzie* Lord Advocate, for 100 *L. Sterling*; Sir *Hugh* thereafter granted a Bond of Corroboration to *George Mackenzie* Son of Sir *George*.

OF this Bond there were from Time to Time several Payments made to *George Mackenzie* of *Inchcoulter* the Son's Curator, which were stated in the Curatory-accounts; and allowed: But there was one Receipt, in the Year 1702, which the Curator neglected to bring in to his Accounts; and in a Pursuit for the Remains of this Bond, depending before my Lord *Pancairland*, the Payment was disallow'd, because the Minor did not concur in granting of the Receipt.

George Mackenzie, after he was of Age, in the Year 1706, became Debitor to one *Adamson* for 500 Merks; and *Inchcoulter*, who had been his Curator, was Cautioner for him, and, having paid the Debt, took Assignment to it, which he has lately transferr'd in favour of your Petitioner.

WHEN *Stewart-James Mackenzie*, as Heir of *George Mackenzie*, insisted for Payment of the Remains of this 100 *L. Sterling*, I pled Compensation on the 500 Merk Bond, to which I had Right. And the Pursuers having objected, 1^{mo}, "That this Bond, amongst several others, was by Sir *George Mackenzie* tailzied to certain Heirs, with prohibitive and irritant Clauses; and therefore, as *George Mackenzie* could not have disposed of this Sum in Prejudice of the Tailzie, so neither could his Debts compensate it. 2^{do}, The Debt did not come in your Petitioner's Person till after the Death of *George Mackenzie*; so that, however it might have been competently objected to *George Mackenzie*, Sir *George's* Son, yet it is not competent to be objected to the Pursuer, who is Heir of Tailzie in the Debt pursued for, and has only Right as such, and not as general Heir to *George* the Institute."

UPON my Lord *Pancairland's* Report, your Lordships had no Regard to the first Alledgance, not only because a Tailzie of moveable Sums, with prohibitive and irritant Clauses, is in our Law inept; but that, by looking into the Tailzie, there is no such Thing as any irritant and prohibitive Clause adjected to the Conveyance of the moveable Sums: But, in Regard of the second Alledgance, your Lordships by your Interlocutor of the 29th of *June* last, Found my Defence of Compensation not competent.

THIS seems to be the hardest Case that possibly can occur. When I have bona fide made Payment to the Curator and sole Manager of *George Mackenzie* and his Affairs, in the same Manner as several other Payments were made and allowed, I am told that the Minor did not concur with his Curator in the Voucher of this Payment. When I insist against the Curator, he tells me, That he has laid out the Money received upon the Minor's Affairs, by paying of a Bond in which he was bound Cautioner for the Minor; and as the Minor could never have recovered this Sum from him the Curator, without allowing Payment of his own Bond; so neither can your Petitioner repeat